



FILED
Mar 19 2009, 9:59 am
Kevin L. Smith
CLERK
of the supreme court,
court of appeals and
tax court

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STATE OF INDIANA,
Appellee-Plaintiff.

BAKER, Chief Judge

Appellant-defendant Benjamin W. Brown appeals his conviction for Battery,¹ a class C felony, arguing that the evidence is insufficient. Brown also contends that the aggregate sixteen-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm.

FACTS

On August 17, 2007, Brown was an inmate in the Greene County Jail. Another inmate, Jeffrey Carman, was standing outside of his cell while Brown was using a nearby payphone. When Brown was finished using the phone, he approached Carman and struck him with his open hand on the side of his head. Carman was rendered unconscious and fell to the ground, striking his head on the concrete floor. Brown then took Carman's false teeth, which had fallen out of his mouth, and rubbed his genitals with them, saying, "[w]elcome to B block bitch[.]" Tr. p. 81, 201. When Carman later regained consciousness, he vomited, had poor balance, and complained of a headache.

Subsequently, jailer Robert Evans was instructed to check on Carman's well-being. Upon speaking to Carman, Evans observed that the inmate was incoherent. Because Carman's vital signs were normal, however, he was taken to a holding cell and put on medical watch. Sometime later, Carman was "very wobbly and unsteady on his feet[.]" *Id.* at 111. Subsequently, Carman vomited again and Evans observed blood in the vomit. Thereafter, Carman was transported to the hospital. When he arrived, he did not know what year it was, why he was in jail, or how long he had been in jail. Further examination and a CT scan revealed bleeding behind Carman's eardrums and

¹ Ind. Code § 35-42-2-1(a)(3).

hemorrhaging in the brain. Carman was then transported by helicopter to a neurosurgeon in Indianapolis, and the neurosurgeon discovered that Carman had sustained a concussion and multiple skull fractures. Carman also suffered hearing loss as a result of the trauma.

On September 7, 2007, the State charged Brown with class C felony battery. The State later amended the charge to include a habitual offender enhancement. At Brown's July 7, 2008, jury trial, the jail commander testified that she had interviewed all of the inmates that were present on Carman's cell block on the day of the incident. During the first set of interviews, none of the inmates indicated that Brown had struck Carman. But after the commander informed two of the inmates that lying was a violation of jail rules that could result in the revocation of good credit time, the two inmates revised their statements and explained that Brown had struck Carman in the head. In his initial interview with the jail commander, Brown denied any involvement, but the next day, Brown admitted that he had struck Carman. Brown believed that the battery was justified because Carman had allegedly used minutes from Brown's phone card.

On July 9, 2008, the jury found Brown guilty of class C felony battery. Brown subsequently admitted to being a habitual offender. On August 5, 2008, the trial court sentenced Brown to eight years for battery and enhanced that sentence by eight years for the habitual offender finding, for an aggregate sentence of sixteen years. Brown now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Brown first argues that the evidence is insufficient to support his battery conviction. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor assess witness credibility, instead considering only the evidence that supports the verdict and all reasonable inferences that may be drawn therefrom. Alkhalidi v. State, 753 N.E.2d 625, 627 (Ind. 2001). We will affirm unless no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

To convict Brown of class C felony battery, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally touched Carman in a rude, insolent, or angry manner, causing serious bodily injury to Carman. I.C. § 35-42-2-1(a)(3). At trial, the State offered a number of eyewitnesses who testified that Brown struck Carman and that, following the incident, Carman vomited and had difficulty maintaining his balance. Another inmate testified that he had overheard Brown bragging about the incident. Furthermore, Brown admitted that he had struck Carman.²

² Brown argues that his confession should have been suppressed because he was in custody but was not given the Miranda warnings before making his statement. Miranda v. Arizona, 384 U.S. 436 (1966). Brown did not object to the introduction of the confession at trial; therefore, he has waived this argument. Livermore v. State, 777 N.E.2d 1154, 1158 (Ind. Ct. App. 2002). Brown argues that the admission of this evidence was fundamental error, but we cannot agree, inasmuch as the State offered testimony of multiple witnesses corroborating Brown's confession. Frey v. State, 580 N.E.2d 362, 365 (Ind. Ct. App. 1991) (holding that an error is harmless where other admissible evidence proves substantially the same facts as the inadmissible evidence). Thus, even if we accepted Brown's argument that it was error to admit his confession, the error was harmless.

Brown argues that the incredible dubiousity rule renders his conviction improper.

Our Supreme Court has explained the incredible dubiousity rule as follows:

Within the narrow limits of the “incredible dubiousity” rule, a court may impinge upon a jury’s function to judge the credibility of a witness. If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.

Love v. State, 761 N.E.2d 806, 810 (Ind. 2002) (internal citations omitted). Here, there were multiple witnesses who testified that Brown struck Carman. Furthermore, there is no evidence that their testimony was coerced; nor, for that matter, is their testimony incredibly dubious. Thus, the incredible dubiousity rule does not apply.

Brown’s remaining arguments seek to impeach the credibility of the witnesses and question the circumstances surrounding their interviews with the jail commander. These arguments amount to a request that we reweigh the evidence and assess witness credibility—a request we decline. We find sufficient evidence supporting Brown’s conviction for class C felony battery.

II. Sentence

Brown also argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the

defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Here, Brown was convicted of a class C felony and also admitted to being a habitual offender; thus, the maximum sentence he faced was twenty years imprisonment. Ind. Code §§ 35-50-2-4, -7. The trial court found Brown's admission to his habitual offender status and the fact that his father abused him when he was a child to be mitigators. The trial court found Brown's extensive criminal history and that he committed the offense while on probation in one offense and on bond in another as aggravators. Finding that the aggravators outweighed the mitigators, the trial court sentenced Brown to sixteen years, four years less than the maximum sentence.

As for the nature of the offense, Brown struck Carman brutally and without warning. The blow was rendered with such force that it knocked the victim to the ground and rendered him unconscious. Thereafter, Brown rubbed Carman's false teeth on his genitals, saying, "[w]elcome to B block, bitch[.]" Tr. p. 81, 201. As a result of the incident, Carman vomited blood, became incoherent, and sustained a concussion and multiple skull fractures.

Turning to Brown's character, we observe that his lengthy and sobering criminal history includes the following convictions in addition to a juvenile adjudication for battery and resisting law enforcement: in 1996, class D felony criminal gang activity and theft; in 1999, class A misdemeanor resisting law enforcement and class D felony failure to return to lawful detention; in 2000, class A misdemeanor criminal mischief and operating a vehicle while intoxicated and class D felony resisting law enforcement and

battery resulting in bodily injury to a police officer; in 2003, class D felony battery resulting in bodily injury and false informing; in 2004, resisting law enforcement and class D felony theft; in 2005, class A misdemeanor criminal mischief and check deception, class B misdemeanor battery, and class D felony receiving stolen property. Brown has been charged with at least one crime in every single year between 1995 and 2007. He has never held a job for more than six months at thirty-one years of age, has never completed high school, has never paid any of his probation fees, has never paid restitution to any of his victims, and has never successfully completed probation in any of the seven times he has been offered that opportunity. Under these circumstances, the trial court was exercising leniency in imposing a sentence four years less than the maximum. Given the totality of the nature of the offense and Brown's character, we do not find the aggregate sixteen-year sentence imposed by the trial court to be inappropriate.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.